



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING March 16, 2017

Board Members: Ron Barbato, PT, Chair
Talia Weinberg, PT, Chair-Elect
Troy Grubb, PT
Dan Martin, PT
Linda Pillow, PT
Tina Volz, PT

Board Staff: Scott D. Majors, Executive Director
Krista Barton, Executive Secretary
Beth Bell, Licensure Coordinator
Stephen Curley, Investigator
Louis D. Kelly, Esq., Board Counsel

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD, KPTA Liaison

Board Members Absent: Virginia Johnson, Public Member

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Ron Barbato, at 9:05 a.m. on Thursday, 3/16/17, at the Board office. A quorum was present.

Minutes for Previous Regular Meeting

The Board reviewed the draft minutes of the 01/19/17 Board meeting.

Action taken: Ms. Pillow made a motion to approve the minutes of the Board meeting of 01/19/17 with no changes. The motion was seconded by Ms. Weinberg, which carried.

KPTA/KBPT Liaison Report

KPTA's Liaison, Dr. Kuperstein, reported that a House Floor Amendment was attached to SB 219, an act relating to recreational therapists and making an appropriation therefor, amending KRS 317.540 to stipulate that hours earned at one barber school may not be transferred to another barber school until all moneys owed to the first school are paid in full. Dr. Kuperstein further reported that KPTA's lobbyist, Leigh Ann Thacker, opined that the amendment would likely kill the bill. As Recreational Therapists had made concessions concerning the language of this bill, KPTA is understandably concerned with the proposed amendment.

KBPT's Liaison, Mr. Martin, reported that there will be a KPTA Board meeting on 03/21/17.

Board Discussions, Committees and Opinion Requests

Proposed Physical Therapy Licensure Compact

Mr. Majors and Mr. Kelly informed the Board that HB 227, the bill concerning the Physical Therapy Licensure Compact, had passed the House and the Senate and was currently awaiting a signature from the Governor. Also, Mr. Majors and Mr. Kelly discussed presenting our legislative sponsor, Rep. Melinda Gibbons Prunty with a plaque conveying the Board's appreciation for her tireless efforts and dedication to the successful enactment of the Physical Therapy Licensure Compact.

Action taken: Ms. Volz made a motion to authorize Mr. Majors to purchase a plaque for Rep. Prunty to be presented to her by the Board Chair and staff. The motion was seconded by Mr. Grubb, which carried.

Commonwealth's Reorganization: Department of Occupations and Professions

The Board reviewed and discussed Executive Order 2016-859 and HB443 relative to the Governor's reorganization plan for state boards and agencies.

Action taken: Mr. Barbato asked that Mr. Martin and Dr. Kuperstein discuss the possible reorganization with KPTA leadership at the next KPTA meeting on 03/21/17.

FSBPT Delegate Assembly

The Board discussed the FSBPT Annual Conference and Delegate Assembly meeting scheduled for November in Santa Ana Pueblo, New Mexico.

Action taken: After discussion Ms. Volz made a motion for Ms. Weinberg to serve as KBPT's Primary Voting Delegate and for Mr. Martin to serve as KBPT's Alternate Voting Delegate. The motion was seconded by Ms. Weinberg, which carried.

Presentation Proposals for FSBPT 2017 Annual Meeting

Mr. Kelly, Mr. Curley and Mr. Fingerson proposed possible presentation topics and informed the Board that they will be submitting proposed outlines to FSBPT for approval.

Action taken: No action taken.

CAPTASA

Mr. Martin gave a brief report to the Board concerning his attendance of the 2017 CAPTASA Conference in Lexington, Kentucky, in January.

Action taken: No action taken.

FARB Annual Forum

Mr. Kelly gave a brief report to the Board concerning his attendance at the 2017 FARB Annual Forum in San Antonio, Texas, in January. He discussed a presentation relative to disciplinary cases and how an investigator has developed a relatively sophisticated process for investigative interviews using low cost technology.

Action taken: No action taken.

Proposed KBPT Monitor Training Program

Mr. Kelly reported that he spoke with Dale Atkinson at the FARB Conference in January regarding the monitoring training program that Mr. Majors previously proposed to their Board in 2016. Following this discussion, Mr. Kelly inferred that FARB does not have present interest in assisting KBPT with the development of this project, and thus Board staff shall assume this responsibility. Due to workload schedules assigned to staff in the near term, Mr. Majors shall table this matter for Board consideration at a later date.

Action taken: Mr. Curley and the Monitoring Training Workgroup will develop a draft outline to present to the Board at a later date.

KBPT Database Replacement

Mr. Curley reported that the Board office has transitioned to the new database. The database is properly housing information; however, there have been multiple issues with data filtering. Board staff and Kentucky Interactive are continuing to work closely to resolve any issues.

Action taken: No action taken.

Renewal

Mr. Majors reported that Board staff has sent out two mass emails reminding credential holders to renew prior to 03/31/2017. Ms. Bell reported data regarding the number of individuals who have renewed their credential. Mr. Curley and Ms. Barton reported on issues that staff members have experienced regarding the online renewal process, specifically related to server issues, and they further explained the types of phone calls the staff members have been fielding from credential holders.

Action taken: No action taken.

2015-2017 Audit

Mr. Majors reported that Board staff members have sent out a mass email regarding the new audit procedure and information regarding Active Military Duty Exemptions, Non-Hardship Extensions and Hardship Extensions. Mr. Majors reviewed with the Board the timeline of the upcoming 2015-2017 audit. During the meeting, Mr. Barbato was randomly selected to be audited for the 2015-2017 audit. Mr. Majors asked for Board approval to sign the audit orders that will be mailed out on 04/05/17.

Action taken: Mr. Grubb made a motion to authorize Mr. Majors to sign the Board audit orders in a representative capacity. The motion was seconded by Ms. Pillow, which carried.

KBPT Newsletter and Social Media

The Board reviewed the news articles for the upcoming newsletter. Mr. Kelly reported that he would begin posting the newsletter articles on the Board's new Facebook page and include links to the website. The Board discussed that future posts to the Board's Facebook page should be approved by the Chair prior to posting to the page.

Action taken: No action taken.

FSBPT Supervised Clinical Practice Performance Evaluation for Foreign Educated PTs

During the January Board meeting the Board Members and staff participated in a webinar regarding FSBPT's Performance Evaluation Tool for Supervised Clinical Practice, an online tool available for use in evaluating foreign educated applicants. Mr. Majors provided additional information to the members to be reviewed prior to the March meeting regarding this tool. The Board briefly reviewed the process how staff members determine if a foreign educated applicant has successfully completed supervised practice.

Action taken: After discussion, Ms. Volz made a motion that the Board adopt the FSBPTs Supervised Clinical Practice Performance Evaluation Tool, and authorize Mr. Majors to file a proposed amendment to 201 KAR 22:070 that references the FSBPT tool.

Additionally, staff asked the Board for its interpretation of language in 201 KAR 22:070 and KRS 327.060 relative to foreign educated applicants. The Board clarified that, for applicants who have been educated outside of the United States for their initial education and who later obtain a DPT through a 12/24 month bridge/transitional program offered by a CAPTE accredited school, the bridge/transitional program is not CAPTE accredited even though the school itself may be CAPTE accredited. Thus as the DPT earned through a bridge/transitional program is not earned through a CAPTE accredited program, staff should consider only the initial education when applying the cited statute and regulation when processing applications from foreign-educated applicants.

Action taken: No action taken.

BoardEffect

During the January Board meeting Mr. Majors asked the Board to consider whether to renew the Board's contract with BoardEffect. The Board discussed the pros and cons of BoardEffect and compared it to the program staff previously used with Kentucky Interactive.

Action taken: After discussion, Ms. Volz made a motion to not renew the BoardEffect contract for FY 2018 and to have Board staff so notify BoardEffect. The motion was seconded by Mr. Grubb, which carried.

2017 Offsite Board Meetings

Mr. Majors presented a list of PT and PTA schools in Kentucky that responded to an inquiry if any of the schools would be interested in hosting an offsite Board meeting later this year.

Action taken: After reviewing the locations, the Board instructed staff to contact Bellarmine and try to facilitate an offsite Board meeting for the month of September and, if staff is unable to easily coordinate a meeting with Bellarmine, for staff to attempt a similar arrangement with Western Kentucky University.

Opinion Requests

The Board reviewed the following opinion requests from:

(1) N.J., PTA, who submitted a request for hardship extension for the 2017 Continued Competency audit for the Board's review.

Action taken: Following review, Ms. Volz made a motion to grant a six month extension. The motion was seconded by Mr. Grubb, which carried.

(2) Hank White, PT who sought clarification on whether performing a pedobarography (dynamic foot pressure test) would require him to complete a physical therapy evaluation when he is just collecting test data.

Action taken: Following discussion, the Board instructed staff to respond that, if Mr. White is only gathering data for a physician, the pedobarography is not considered physical therapy; however, if it results in physical therapy treatment, an evaluation needs to be completed.

(3) Mr. Majors brought a renewal application before the Board for review. The credential holder answered "yes" to question 1c, affirming that his/her practice privileges were placed in abeyance by their employer. Furthermore, the credential holder answered "yes" to question 1g, indicating that he/she had undergone treatment for drug or alcohol abuse in 2015. Mr. Fingerson suggested offering the credential holder a voluntary IPTPC contract.

Action taken: Following discussion, the Board instructed staff to contact the credential holder and suggest that he/she may voluntarily enroll in IPTPC.

(4) G.E., PT, who submitted a request for hardship extension for the 2017 Continued Competency audit for the Board's review.

Action taken: Following review, Ms. Pillow made a motion to grant a two month extension. The motion was seconded by Ms. Weinberg, which carried.

(5) Mr. Majors brought a renewal application before the Board for review. The credential holder answered “yes” to question 1h, involving an impairment issue, and the credential holder is not currently practicing.

Action taken: No action taken.

(6) Mr. Majors brought a renewal application before the Board for review. The credential holder answered “yes” to the question 1a, affirming that he/she has pending charges in another state.

Action taken: No action taken.

(7) Joel Clark, PT, who sought clarification regarding the role of a PT in a school setting when the service is for a consultation, and whether the PT is required to complete an evaluation when no physical therapy services are provided.

Action taken: Following discussion, the Board instructed staff to respond to Mr. Clark that, if he is referring to a consultation as completing a screening as the regulation states in 201 KAR 22:053 Section 2(a)-(c), he would not need to perform an evaluation. However, if anything further is completed, an evaluation and plan of care are required.

(8) Mr. Majors brought a renewal application before the Board for review. The credential holder answered “yes” to question 1a, affirming that he/she had pled guilty to a misdemeanor drug charge. Mr. Fingerson reported that he had reviewed the application and made no recommendations.

Action taken: No action taken.

(9) C.C., PT, who submitted a request for hardship extension for the 2017 Continued Competency audit for the Board’s review.

Action taken: Following review, Ms. Pillow made a motion to grant a 90 day extension. The motion was seconded by Ms. Volz, which carried. Ms. Weinberg recused from any consideration of this matter.

(10) V.H., PTA, who submitted a request for hardship extension for the 2017 Continued Competency audit for the Board’s review.

Action taken: Following review, Ms. Weinberg made a motion to grant an extension through the month of August 2017. The motion was seconded by, Ms. Pillow, which carried.

Civil Matters and Investigations

2015 Complaint Committee

C2015-11: The Complaint Committee reported that, as of 03/12/17, the Board’s General Counsel has not been contacted by the credential holder. There will be a status update provided at the May Board meeting.

Action taken: No action taken.

BIC2015-13: The Complaint Committee reported that the credential holder is still suspended under an Immediate Temporary Suspension (ITS). Counsel has offered a Settlement Agreement and has not received a response regarding the proposed Settlement Agreement. Counsel reported that he is waiting to hear from the Hearing Officer to schedule a hearing date. Mr. Fingerson reported that he received a message from this credential holder which alarmed staff about the credential holder’s physical and mental health. Mr. Kelly informed the Board that he had tried to reach out to the credential holder and

appropriate officials and offer assistance. Mr. Kelly and Mr. Fingerson have not heard anything further from the credential holder.

Action taken: No action taken.

2016 Complaint Committee

C2016-16: The Complaint Committee reported that the complaint is ongoing. Additionally, after the November Board meeting a Notice of Hearing was filed for failure to respond to a Board Order. The Board authorized Counsel at the January meeting to file a Motion to Dismiss the Administrative Action before the hearing officer.

Action taken: The Complaint Committee recommended and moved to accept the Final Order dismissing the Notice of Hearing and continue the investigation. The motion was seconded by Mr. Grubb, which carried.

C2016-22: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

BIC2016-23: The Complaint Committee reported this case is ongoing.

Action taken: No action taken.

2017 Complaint Committee

BIC2017-01: The Complaint Committee reported that this case involved a possible violation of the credential holder's Settlement Agreement.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to close this case. The motion was seconded by Mr. Grubb, which carried.

C2017-02 – The Complaint Committee reported that the Board staff received notification of an Adverse Action report from FSBPT on this credential holder relating to Continued Competency violations in another jurisdiction.

Action taken: The Complaint Committee recommended and moved to take no action. The motion was seconded by Ms. Pillow, which carried.

BIC2017-03 – The Complaint Committee reported that the credential holder failed to notify the Board of a Malpractice Settlement that occurred in October of 2014. The credential holder notified the Board of this during the current renewal cycle.

Action taken: The Complaint Committee recommended and moved to open an investigation. The motion was seconded by Ms. Pillow, which carried.

IPTPC Report

Mr. Fingerson presented his written IPTPC report dated 03/09/17. He also informed the Board that he has changed the format of the IPTPC report to include compliance information regarding calls for drug screening. Additionally, if a participant fails to call in they are automatically scheduled for a test the following day. IPTPC cases which previously have come to the attention of the Board or were discussed at length during the Complaint Committees' reports were reviewed.

Update on Monitoring Probations

The Board noted the following credential holders who are presently being monitored:

Tiffiney S. Bentley, PT: Ms. Dixon submitted a letter stating that the monitoring session she had scheduled with Ms. Bentley had been cancelled due to the fact that Ms. Bentley had not seen any patients. Additionally, Board staff reported that Ms. Bentley submitted a request for early release from monitoring.

Action taken: Mr. Grubb made the motion to deny Ms. Bentley's request. The motion was seconded by Ms. Pillow, which carried.

Donald Bruce Taylor, PT: A monitor report was submitted by Dr. Janice Kuperstein, the Board-appointed monitor and considered by the Board. The Board discussed at length the monitoring report submitted by Dr. Kuperstein. Dr. Kuperstein also reported that she expressed a willingness to Mr. Taylor to ask the Board to be relieved as monitor, if Mr. Taylor preferred, but, upon reflection, Mr. Taylor refused the offer.

Action taken: Based on the results of the monitoring report submitted by Dr. Kuperstein, Ms. Weinberg made a motion to open a Board Initiated Complaint (BIC) concerning possible substandard care. The motion was seconded by Ms. Pillow, which carried.

REPORTS AND OTHER BUSINESS

Legal Report

Administrative Regulations – 201 KAR 22:020 and 201 KAR 22:053

Mr. Kelly reported that the proposed amendments to 201 KAR 22:020 will become effective on 03/30/17. Also, Mr. Kelly updated the Board on proposed revisions to 201 KAR 22:053 issued by the Legislative Research Commission (LRC). The Board commented on LRC staff's suggested amendments, and Mr. Kelly indicated he would follow up with LRC staff.

Fair Chance Employment

Mr. Kelly briefly discussed Governor Bevin's Fair Chance Employment Executive Order and its impact on the Board.

Legislative Bills

Mr. Kelly discussed the following bills being proposed in the 2017 General Assembly:

- Senate Bill 120
- Senate Bill 132
- House Bill 50
- House Bill 113
- House Bill 450

Articles

Mr. Kelly discussed articles relating to licensure boards in Iowa, Mississippi, and North Carolina.

2017 NCSBN

Mr. Majors informed the Board that Mr. Kelly had been selected to present at the National Council of State Boards of Nursing Conference in Pittsburgh in June.

FSBPT Director's Report

Mr. Barbato reported that all of the members of the Podiatry Board in Florida recently resigned following an antitrust issue. Additionally, Mr. Barbato reported that FCCPT has still not received a response from the United States Citizenship and Immigration Services (USCIS). Furthermore, Mr. Barbato reported that FSBPT has created a new Coursework Evaluation Tool for PTAs (PTA-CWT-2).

KBPT Executive Director's Report

Financial Report

The Board reviewed monthly, quarterly and FY 2017 FAS3 financial reports addressing the Board's revenues and expenditures. Mr. Majors also reported that he met with the members of the 2017 Finance Workgroup on 03/15/17 to discuss in greater detail the Board's revenue, personnel and operating expenses, quarterly allotments and annual appropriations.

Action taken: No action taken.

KBPT School Presentations

Mr. Majors provided a report concerning school presentations conducted, and scheduled to be conducted, by Board staff relating to initial license application and the administration of the Jurisprudence Examination.

Action taken: No action taken.

New Business

Mr. Majors reported that staff received an email informing the Board there was a question on the Jurisprudence Exam regarding 201 KAR 22:053 Section 2(4)(b), that references the term "mentally retarded." The credential holder stated that there is a statute that prohibits the use of this term in any future statutes. Mr. Majors explained that the Board's regulation references another regulation, 902 KAR 20:086, and that the current language in the Board's regulation mirrors the precise language in the second regulation; therefore, no amendment is mandated.

Additionally, Mr. Majors reported that a legislator reached out to the Board regarding an exam applicant. Last December he received an email inquiring about the same situation. The individual in question has taken the PTA exam fourteen times. When the Board adopted by regulation the six lifetime exam limit in 2012, the applicant was notified that he/she was no longer eligible to test through our jurisdiction. Notification was sent again in 2014 when FSBPT adopted a lifetime limit of six exam attempts for physical therapists and a lifetime limit of six exam attempts for physical therapy assistants, respectively. Mr. Majors responded to both inquiries, stating that the exam limit is mandated in our regulation; therefore, the Board has no authority to assist in this situation. FSBPT's appeal process allows a member board that does not have an exam limit to petition on behalf of an applicant in that jurisdiction to sit for the NPTE. Thus, if the applicant passes the exam in that jurisdiction, he/she may apply as an endorsement candidate in Kentucky.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences

- a. FSBPT Regulatory Training for Members and Board Staff
(06/09-11/17 – Alexandria, VA)

Mr. Grubb made a motion that Mr. Martin serve as KBPT's authorized representative.
The motion was seconded by Ms. Pillow, which carried.

- b. Leadership Issues Forum (LIF)
(07/29-30/17 – Alexandria, VA)
2017 KBPT Voting Delegate (Ms. Weinberg) and Board Administrator (Mr. Majors) shall serve as KBPT's authorized representatives.
- c. CLEAR – 2017 Annual Education Conference
(09/13-16/17 – Denver, CO)
- d. FARB – 2017 Regulatory Law Seminar
(10/05-08/17 – Savannah, GA)
- e. FSBPT – 2017 Annual Meeting, Conference and Delegate Assembly
(11/02-04/17 – Santa Ana Pueblo, NM)

New Licensee/Reinstatement/Renewal Applications

Action taken: Mr. Pillow made the motion to review, approve and ratify the lists of persons issued licenses and certificates since the last meeting, as well as a list of examinees and reinstatements. This motion was seconded by Ms. Weinberg, which carried. The lists are attached to these minutes.

Mr. Grubb made the motion to adjourn the meeting at 3:53 p.m., seconded by Mr. Martin, which carried.

Respectfully submitted,



Scott D. Majors
Executive Director